

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

ROBERTA ANN COXTON,)	
)	
Plaintiff,)	
)	
)	
v.)	Civil Action No. _____
)	
)	
BUSH & BURCHETT, INC.,)	
BIZZACK, INC.,)	
AUSTIN POWDER, INC.,)	
and)	
THE MOUNTAIN COMPANIES,)	
)	
Defendants.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, defendant Austin Powder Company, ("Austin Powder") files this notice to remove from the Circuit Court of Buchanan County, Virginia ("State Court"), the action styled Roberta Ann Coxton v. Bush & Burchett, Inc., Bizzack, Inc., Austin Powder Company, and The Mountain Companies, Case No. CL145-04, to the United States District Court for the Western District of Virginia at Abingdon, upon the following grounds:

1. The action was filed in State Court on April 23, 2004. A copy of the motion for judgment is attached as Exhibit 1.

2. The defendants were served through their registered agents on March 18, 2005.

3. Austin Powder has filed a copy of its Grounds of Defense in State Court, along with this Notice of Removal and a Consent to Removal from defendants Bush & Burchett, Inc., Bizzack, Inc., and The Mountain Companies. No other pleadings have been filed in State Court.

4. At the time this action was filed (and at the time of removal), plaintiff was a citizen of Virginia.

5. At the time this action was filed (and at the time of removal), defendant Austin Powder was a citizen of Ohio, in that it was incorporated in Ohio and had its principal place of business in Ohio.

6. At the time this action was filed (and at the time of removal), defendant Bush & Burchett, Inc., was a citizen of Kentucky, in that it was incorporated in Kentucky and had its principal place of business in Kentucky.

7. At the time this action was filed (and at the time of removal), defendant Bizzack, Inc., trading as The Mountain Companies, was a citizen of Kentucky, in that it was incorporated in Kentucky and had its principal place of business in Kentucky.

8. There is complete diversity of citizenship between plaintiffs and defendants.

9. The matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

10. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, 1441, and 1446.

11. All defendants consent to and join in the removal of this action to this Court.

12. Notice of this removal is being sent to all parties and to the Clerk of the State Court.

WHEREFORE, this action and all papers herein should be removed from the State Court to this Court.

AUSTIN POWDER COMPANY

By Counsel

Wade W. Massie
VSb No. 16616
Cameron S. Bell
VSb No. 47685
PENN, STUART & ESKRIDGE
P.O. Box 2288
Abingdon, Virginia 24212
Telephone: 276/628-5151
Facsimile: 276/628-5621
/s/ Wade W. Massie
Wade W. Massie

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and I further certify that I have mailed by United States Postal Service the document to: Benjamin A. Street, Street Law Firm, P.O. Box 2100, Grundy, VA 24614, counsel for plaintiff; and to William B. Tiller, Esq., 1108 East Main Street Capitol Place, Suite 902, Richmond, VA 23219, counsel for Bizzack, Inc., The Mountain Companies, and Bush & Burchett, Inc.

/s/ Wade W. Massie
Wade W. Massie
VSB No. 16616
Counsel for Defendant Austin
Powder, Inc.
PENN, STUART & ESKRIDGE
P.O. Box 2288
Abingdon, Virginia 24212
Telephone: 276/628-5151
Facsimile: 276/628-5621